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HAROLD B. WILLEY, C

IN THE

Supreme Court of the United States

October Term, 1955
No. 510

GUS O. BROWN and OSCAR CASTRO, individually and as Business Agents of Local Union 576, United Furniture Workers of America, CIO, a voluntary unincorported association; ERNEST MARSH and HENRY B. HOLMES, individually and as organizers of Local Union 576, United Furniture Workers of America, CIO, a voluntary unincorporated association; KRUGER CLARK, LAWRENCE TURNER, JACOB LEHMAN, SOL STEINHARDT, DAN QUIJARDA, PETER BEEKES, LOUISA TOCCI, MARK ROBINSON, JOE N. OLIVER, and ROBERT BURRI, individually and as officers and agents of Local Union 576, United Furniture Workers of America, CIO, a voluntary unincorporated association, FURNITURE WORKERS, UPHOLSTERERS AND WOOD WORKERS UNION, Local 576 (INDEPENDENT), a voluntary unincorporated association; LOUIS COTA, JR., individually and as President thereof; GUILLERMO NAVARROS, individually and as Financial Secretary thereof; HENRY MOBLEY, individually and as Treasurer thereof,

Petitioners,

vs.

MORRIS PIZER, individually and as International President, and WILLIAM GILBERT, individually and as International Representative of and Members and representatives of the members of the United Furniture Workers of America, a voluntary unincorporated association, ALEX O. RIVERA, FRANK JONES, GEORGE B. TRIPP, FRANCES CARR, CHRIS LAGUTARIS, and ETHEL KIGGINS, individually and as members of and representatives of the members of Local Union 576, United Furniture Workers of America, CIO, a voluntary unincorporated association,

Respondents.

Petition for a Writ of Certiorari to the District Court of Appeal, Second Appellate District, State of California, Division Two.

BEN MARGOLIS,
112 West Ninth Street,
Los Angeles 15, California,
Attorney for Petitioners.

The Myers Legal Press, Los Angeles. Phone VAndike 9007.

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Respondents.

Petition for a Writ of Certiorari to the District Court of Appeal, Second Appellate District, State of California, Division Two.

Petitioners pray that a writ of certiorari issue to review the judgment of the District Court of Appeal for the State of California, Second Appellate District, entered in the above entitled case on May 31, 1955, rehearing

denied on June 16, 1955, hearing in the Supreme Court of the State of California denied on July 27, 1955. (Appendix C.) On October 21, 1955, Mr. Justice Douglas made an order extending petitioner's time to file their petition for writ of certiorari and record on appeal to and including November 9, 1955.

Citation to Opinion Below.

The only written opinion in this case was rendered by the District Court of Appeal. It is reported at 133 A. C. 470 and is printed as Appendix B to this petition.

Jurisdiction.

The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257(3).

Constitutional Provisions and Statutes Involved.

The provisions of the United States Constitution involved are Article I, Sections 9 and 10 (obligation of contract and bill of attainder), Article VI (federal supremacy), Amendment XIV (due process and equal protection). They are printed in Appendix A, page 1.

The federal statutory provisions involved are the Labor Management Relations Act, 29 U. S. C., Sections 157, 159(a), (b), (f), (g) and (h). They are printed in Appendix A, pages 2-6.

Questions Presented.

Under the contractual relationship between a local labor union and the International union with which the local was affiliated, the International was obligated to assist the local in its functioning as a labor union. The International secretly embarked upon a program designed and

calculated to deprive the local of all of its members, collective bargaining agreements and other assets and thereby to destroy the local. The local, after protesting to no avail the breach of contract, declared that its contract with the International had been terminated and that it would thereafter function as an independent local. The International commenced proceedings for the purpose of enforcing a forfeiture clause, in the agreement between the parties, applicable upon a local disaffiliating from the International. The California District Court of Appeal held that because the local was allegedly under "Communistic leadership" the International, despite its own prior breach of contract, was entitled to enforce the forfeiture clause. The questions presented are:

(1) Whether the decision below by denying to petitioners the right to treat a contract as at an end after repudiation and breach by the respondents, and directing the transference of petitioners' properties, rights and assets to respondent, constitutes State action depriving petitioners of their liberty and property without due process of law, contrary to the Fourteenth Amendment.

(2) Whether the decision below, by reason of the fact that it denies to all trade unions allegedly under "Communist influence" or "Communist leadership" the right to treat contracts as at an end after repudiation and breach by other parties to the agreement, creates an arbitrary classification and denies to petitioners the equal protection of the laws contrary to the equal protection provisions of the Fourteenth Amendment.

(3) Whether in accordance with an asserted public policy derived from federal and state statutes, the decision below, by delegating power to an international union

to confiscate the property of a local union under the forfeiture clause of an agreement previously repudiated by said international, whenever the officers of the said international union deem the local union to be under "Communist influence" deprives petitioners of their liberty and property without due process of law and violates the provisions of the supremacy clause of the Constitution, Article VI.

(4) Whether the decision below, by asserting a public policy derived from state and federal statutes which deprives petitioners of the right to treat a contract at an end when repudiated and breached and deprives petitioners of the right to assert such breach and repudiation as a defense to a suit by the wrongdoer seeking the forfeiture of petitioner's properties under such agreement, constitutes a violation of the provisions of Article I, Section 10 of the Constitution, forbidding the impairment of the obligation of contracts by laws, as construed and applied.

(5) Whether the decision below, by asserting a public policy derived from state and federal statutes that members or officers of a trade union who are allegedly Communists are guilty of criminal activities concerning which they have had no trial, and as a result of which both the officers and the trade union may be arbitrarily stripped of all legal and property rights, violates the provisions of Article I, Sections 9 and 10 of the Constitution forbidding bills of attainder.

(6) Whether the decision below, by depriving petitioners of contract and property rights solely because of alleged "Communist influence" or "Communist leadership," without proof of personal wrongdoing, abridges petitioners' rights to freedom of speech, press and assem-

bly in violation of the provisions of the First Amendment as embodied in the due process clause of the Fourteenth Amendment.

(7) Whether the decision below establishing a rule of law that a qualified and certified union under the Labor-Management Relations Act of 1947 can be deprived of its right to contract or to enforce collective bargaining agreements because it is allegedly under "Communist influence," violates the supremacy clause of the Constitution, Article VI, by purporting to regulate labor relations in a field preempted by Congress.

Statement of the Case.

The action herein was commenced on behalf of United Furniture Workers of America, a national labor union affiliated with the CIO (hereinafter referred to as the International). In 1938 the International issued a charter for the Los Angeles area to Local Union 576 (hereinafter referred to as 576 CIO). Said local was thereafter given jurisdiction to represent and organize under the charter given it by the International *all* furniture workers in Los Angeles and vicinity. In the charter issued by the International to 576 CIO, the International agreed: "To promote and assist the said union in the exercise of all the rights and privileges secured hereunder." [Ex. 1, Art. XXXVIII; Rep. Tr. 1467-85.]

The constitution of the International provided that the charter of a local might be revoked for cause upon charges, notice, and a hearing. In June of 1950, without the filing of any charges, without notice and without any hearing, the International embarked on a campaign to completely destroy 576 CIO by means of divesting it of

all of its membership, contracts and income.[1] Over a period of about four months while this attack continued, the local repeatedly protested to the International and requested information as to whether the International recognized its right to continue to exist at all as one of the International locals. The International ignored all of these protests and requests for information. Finally, 576 CIO advised the International that unless it discontinued its efforts to destroy the local or at the very least replied to the local's protests and inquiries, the local would be forced to consider that its charter had been wrongfully revoked and that it was independent of the International. The International again failed to reply. The local proceeded to function as an independent and the International then commenced these proceedings upon the theory that the local had breached its obligations to the International by disaffiliating therefrom, thereby entitling the International under its constitution to possession of all of the property of the local. [Ex. 1, Arts. XXVII and XXXIX.] The position of 576 CIO was that the International by its campaign to destroy 576 CIO had breached its agreement to give assistance to the local and that by reason of said breach all of the local's obligations to the International had been terminated under the established law of the state. The rulings of the courts below were adverse to the petitioning local union. These adverse rulings were bottomed on the view that the International despite its breach of the contract had the right to enforce the forfeiture pro-

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[1]As will be more specifically noted, *infra*, this campaign had as *one* aspect the granting of a charter to a new local giving it the same jurisdiction as 576 CIO. The campaign in its entirety, however, was directed at the complete elimination of 576 CIO as a functioning local.

vision of the agreement because of the alleged "Communist influence" within 576 CIO.

The respondents conceded that the alleged Communist activities of the local did not constitute any breach of the local's obligations to the International. Except for its disaffiliation from the International, which occurred after and as a consequence of the International's attempt to destroy 576 CIO, there is no claim that the local violated any of its obligations to the International. Thus the respondents conceded in the trial court that except for such disaffiliation "there was no breach by the officers of 576 upon which action could be brought under the constitution. There is nothing in the constitution of the international union or any of its rules or by-laws which says that the officers of any particular local cannot have political opinions or beliefs which are different from those of the International president or the majority of the international union. We do not claim that because some of the officers of local 576 may have disagreed on questions of policy with the international union, that the international union would then have the right to expel those officers from the international union or to revoke its charter. That is not our position." [Rep. Tr. 1306-8.]

When in June of 1950 respondent Pizer, the president of the International was urged to take action against 576 CIO, on assertions that it was communistic, he replied that he would like to do this but that he could not, that he had no authority under the International constitution, "because locals have autonomy"; "but if they could show him how it could be done that he would do it." [Rep. Tr. 901-21, 1160-2, 1170-80.]

The reasons for the failure of the International to file any charges against the local or to give it a hearing thus

becomes apparent. However, the International president was either shown, or discovered, a way to accomplish his objective. In June of 1950 respondent Pizer secretly hired two members of 576 CIO for the purpose of taking over the local. [Rep. Tr. 1160-2, 1043-4.] A campaign of open warfare financed and directed by the International was then begun. 576 CIO and its leadership were violently attacked in speeches and in a flood of leaflets and various types of printed material. A new local, 1010, with the identical jurisdiction previously granted 576 CIO was set up by the International. All of the members of 576 CIO were urged to leave that local and join 1010. Demand was made that the employers cease bargaining collectively with 576 CIO, breach and refuse to function under existing contracts with 576 CIO and refuse to forward to 576 CIO dues checked off under valid existing collective bargaining agreements with that local. [Rep. Tr. 1004-10, 1105-7, 972-7, 1142-4, 921-6; Ex. P, Rep. Tr. 1772, 1001-4, 1152-5, 1777-8, 1771, 1171; Ex. R-2, Rep. Tr. 1557-63, 1778-1837; Exs. R-37, BB; Rep. Tr. 455-64; Exs. R-3, II; Rep. Tr. 1401-4, 1406-10, 1621-5, 2234-5; Ex. R-3, Rep. Tr. 964-5, 464-70, 1810-13.]

This campaign, secretly financed and directed by the International openly stated that as a result of the campaign 576 CIO "is doomed in the end" [Ex. R-2], bragging, on August 14, 1951, that as a result of the campaign "Local 576 is now a splintered group incapable of negotiating effectively" [Ex. R-3], and, a few days later that Local 1010 "has conquered the center of the furniture industry in Los Angeles. The rest of the industry can be expected to fall swiftly before the powerful assault of the swelling ranks of 1010 CIO members—and the crumbling Brown machine (referring to 576 CIO) will be brushed

aside." [Ex. R-4, Rep. Tr. 964-5.] Protests and inquiries with respect to the International's course of conduct were communicated to it from 576 CIO on July 12, 1950 [Ex. 61], July 18, 1950 [Ex. V], July 20, 1950 [Ex. W], July 25, 1950 [Ex. X], July 26, 1950 [Ex. T, Rep. Tr. 1505-10], August 11, 1950 [Ex. Y, Rep. Tr. 1544-6], August 15, 1950 [Ex. BB, Rep. Tr. 1494] and August 17, 1950 [Ex. 2]. No reply at all having been received from the International, the attorneys for the local on August 28, 1950, wrote to the International summarizing the facts relating to the International's campaign against 576 CIO. The letter stated that it was the intention of the local to protect itself from destruction but that before any action was taken by the local it desired "to ascertain whether you (the president of the International) or the general executive board or any other authority of the International union have determined whether local 576 CIO is to retain any jurisdiction." Mr. Pizer was asked to advise the local as to what jurisdiction and powers it had, if any. The letter concluded, "We request an answer to this letter within five days. Failing to hear from you within that time, Local 576 will assume that the International has revoked its charter and severed all relations between the International union and Local 576." [Ex. AA.] The request for an answer was ignored.

On August 16, 1950, a group of 576 CIO shop stewards had met and established a new local—Furniture Workers, Upholsterers and Wood Workers Union, Local 576, Independent. The Independent was established "for the purpose of protecting the contract and wage gains of the Local 576 membership, and with the further provision that if the International union would stop raiding and

attacking Local 576, the independent union would be disbanded." [Rep. Tr. 676-7.] The activities of 576 Independent were known to and approved by the officers of 576 CIO, which officers stated that the formation of the Independent was the proper step "but that we should not make it final and conclusive; that in my (petitioner Brown's) opinion we should make every effort to remain in the International union, and we should, however, take steps to protect the interests of the membership and the union if the International continues to attempt to destroy the local union." [Rep. Tr. 557-90.]

576 CIO also took steps to place itself in a position to meet the attacks of the International. At a meeting held on August 22, 1951, a resolution was adopted for the payment of $5,000.00 attorneys' fees to the union's attorneys "to protect the interests of our union." This was done after petitioner Brown discussed the attacks upon the union and stated that the International in effect had revoked the charter of the local by its attacks on the local; that the local had to see to it that it secured the legal services that it needed; that the International had unlimited resources; that it might tie up the local's funds and the local had to make some provisions to continue to operate. At the same time and for the same reason 576 CIO arranged for the payment of advance salaries to staff and representatives of the local. [Rep. Tr. 793-804.]

The first step taken by 576 CIO to actually disaffiliate from the International and to affiliate with the newly formed Independent was taken on August 28, 1950, through a resolution which referred to the organization of Local 1010 and its direction and operation by the International with the intention of achieving the destruction of 576 CIO; it noted that the officers and attorneys

of 576 CIO had repeatedly asked for clarification of the relationship between the International and the local and that no response had been received; that this action had placed 576 CIO and its membership and property in danger and constituted an effective revocation of the local's charter by the International without following the provisions of the constitution of the International and that it had "rendered Local 576 free and independent of the United Furniture Workers of America and without obligation to it under such constitution or otherwise." The officers of 576 CIO were directed by the resolution to effect a merger with the Independent which had been formed by the shop stewards on August 16, 1951. [Ex. FF, Rep. Tr. 664-7.]

This resolution was adopted only tentatively in order to give the International an opportunity to cease its attacks upon the local. A special meeting was scheduled for September 7, 1950, in order to allow further time for answer to the inquiries which had been directed to the International with final action one way or the other to be taken at said September 7 meeting in the light of what the International did or did not do. The withdrawal of the Local 1010 charter was *not* made a condition of the setting aside of the resolution of disaffiliation. [Rep. Tr. 650-2, 659-61, 670-2, 724-8, 736-7.]

On September 7, 1950, the International having done nothing to remedy the situation and in fact having failed to reply to any of the communications of the local, the resolution was finally adopted and the disaffiliation became effective. [Rep. Tr. 638-42, 646, 668-9, 733-5, 740.]

The above facts stand in the record uncontradicted and undenied.

That the claim of "Communist influence" was without foundation in point of fact is evident from the record. In 1949 the International was threatened with expulsion from the CIO because it was allegedly following the Communist Party line. Initially the International and 576 CIO while denying the allegations against them, took the position that the union's policy was determined by the democratic action of its membership and that it would not tolerate interference by the CIO with its autonomy. [Exs. 6, 7 and 8; Ex. 5 for identification, pp. 17, 18 and 43.][2] At the June, 1950, convention of the International this position was reversed by a large majority vote, with 576 CIO supporting the minority view. At the convention the minority locals were assured that they would be given full freedom to state their views and that their autonomy as guaranteed in the preamble of the International constitution [Ex. 1] establishing "a policy of rank and file control," would be respected. [Exs. 11, 12 and 15; Ex. 5 for identification, pp. 16-17.]

The only evidence allegedly relating to claimed Communist activity on the part of 576 CIO pertained to the period of time prior to the International's aforesaid change of policy. This evidence which fell far short of establishing that the local was in fact subject to Communist influence consisted of the following items:

1. In 1948 an assistant business agent without any union authorization or support solicited certain employees to subscribe to the *People's World*, stated

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[2]Exhibit 5 for identification is a complete copy of the convention of proceedings of the International for 1950; Exhibits 6, 7 and 8 and other exhibits hereinafter referred to are marked portions of Exhibit 5 for identification, which marked portions were admitted into evidence.

by the respondents to be the official West Coast newspaper of the Communist Party. [Rep. Tr. 138-9.]

2. At a shop meeting in 1949 the petitioner Brown who was the business agent and a leading figure in 576 CIO was asked whether he was a Communist and he replied, "Are you a member of the Dies Committee?" [Rep. Tr. 81.]

3. As noted above the local at the June, 1950, convention opposed, as a violation of the International's autonomy, the CIO declaration charging the International with following the Communist Party line.

This evidence was held sufficient to establish that the local was in fact under Communist influence. On the other hand, the evidence shows also that the official position of the local with respect to meeting all non-Communist provisions of the law is clear. On September 6, 1949, shortly after the International union had complied with the non-Communist affidavit of the Taft-Hartley law, 576 CIO complied and its officers signed such affidavits. [Rep. Tr. 359-360, 430.][8]

There is absolutely no evidence whatsoever that after the June, 1950, resolution the local was subject to Communist influence. It is true that the local did state its continued opposition to the decision reached at the 1950 convention of the International. However, this was done pursuant to the statements made by the International officers at the convention that the locals were free to do so and had the right to try to induce the International

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[8]The local could not comply under the law until after the International had done so.

to readopt its previous policy of opposition to interference in the International's determination of policy by its own membership. Evidence was also introduced concerning a coordinating committee which later became known as the United Labor Action Committee, consisting of a loose, informal group of representatives of various unions in which all unions were eligible to participate. 576 CIO was not a member of the committee but joined with it in certain actions. There was nothing in those activities of that committee in which 576 CIO joined which indicated any following of the Communist Party line. [Rep. Tr. 744-51.]

Even assuming that the local had engaged in conduct on the basis of which the International was entitled to take punitive action against it, the record is clear that there were never any charges filed against the local nor was there any notice or hearing given to the local before the action to destroy it was taken.

The trial court made specific findings that the issuance of the charter to Local 1010 was not a violation of the International's obligations to the local.[4] Over petitioners' objections the court refused to make specific findings with respect to the other matters set forth above on which the evidence was undisputed.

On appeal the first point in petitioners' brief was: "The Trial Court Erred: (1) in Failing to Find That

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[4]In the court below, the petitioners here had contended that as a matter of contract construction the issuance of the charter to 1010 was in and of itself a breach of the contract with 576 CIO, but its principal and separate contention at all times has been that the program of the International to destroy 576 CIO was such a breach of the contract between the parties as to relieve the local of its obligations thereunder.

Respondent International by Financing and Supporting Activities Designed to Destroy Appellant Local, Breached Its Contract With Appellant Local; and (2) in Finding Despite The Conclusive Proof of Such Financing and Support that the International Did Not Breach Its Contract With Appellant Local; and (3) On the Basis of the Proof on This Point, Rendering Judgment for Respondents (Plaintiffs and Cross-Defendants) Rather Than For Appellants (Defendants and Cross-Complainants)." (App. Op. Br., Dist. Ct. of Appeal, p. 88 *et seq.*) In respondents' reply the facts and argument under this heading were not disputed; they were ignored. (Resp. Br. in the Dist. Ct. of Appeal.) In appellants' reply brief in the District Court of Appeal, petitioners stated: "Appellants' principal contention is that the respondent abridged the essential contractual obligations it owed to the local by financing and supporting activities designed to destroy the local instead of promoting and assisting the local as explicitly required by the contract. This point completely ignored in respondents' brief, in and of itself should dispose of the entire case" (p. 9).[5]

The facts and argument which had been ignored although not disputed by respondents were likewise totally ignored although not disputed in the Court of Appeal's decision. The District Court of Appeal upheld the trial court's conclusion that the new charter was properly issued to Local 1010 by the International. (App. A, pp. 3-4.) But silence enveloped the undisputed facts regarding the campaign to deprive 576 CIO of all of its membership, contracts, checked off dues and other valuable

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[5]On the oral argument the respondents again ignored this point and this was pointed out to the court.

property rights. However, the District Court of Appeal did say: "Respondents' action was reasonable, legal and necessary in protecting its membership from the Communistic influence which, the local's membership felt was discouraging the acquisition of new members and was, itself, misrepresenting Local 576. It has been held that the Communist Party seeks its members especially in the labor unions in which it can compel employers to accept and retain its members. (*Black v. Cutter Laboratoires,* 43 A. C. 813, 829.) The trial court was entitled to find from the facts proved that this was the situation which the International was trying to prevent."

This represents, under the undisputed facts of this case, a holding that a union which is alleged to be subject to Communist influence may be attacked and marked for destruction by its International in violation of the International's contractual obligations to assist and protect the local, and still be bound to forfeit its property to the International if it treats its contract of affiliation with the International as having been breached by the conduct of the International.

The petition for hearing by the Supreme Court of the State of California was denied on July 27, 1955. This petition for certiorari follows.

How Federal Questions Are Presented.

The federal constitutional questions presented herein were raised first in petitioners' Petition for Rehearing filed with the District Court of Appeal following its adverse decision and were reiterated in their Petition

for Hearing by the Supreme Court. The questions were not raised at an earlier stage because the case appeared to involve only questions of state contract law. The contention of petitioners that by reason of the respondents' prior breach of contract resulting from the campaign to destroy 576 CIO, the forfeiture clause of that contract could not be enforced by respondents had never been answered by respondents. No contention had been made that a union allegedly under Communist influence could have its contracts violated with impunity. The holding to that effect was the first knowledge that petitioners had that such a proposition was being considered. The federal constitutional issues were presented at the first possible opportunity thereafter. Copies of the Petition for Rehearing and Petition for Hearing by the Supreme Court are included in the certified record filed in this Court.

Reasons for Granting the Writ.

The courts below have decided federal questions of substance not heretofore determined by this Court, and in a way not in accord with applicable decisions of this Court. State judicial action has resulted in stripping a trade union and its members of their property, rights and assets, and this upon arbitrary and unlawful grounds which disregard the obligations of a contract and the requirements of due process of law and the equal protection of the laws.

To reach this unconstitutional result, the courts below disregarded uncontradicted evidence which plainly demon-

strated the deprivation of federal rights.[6] Under the contract between petitioner local union and respondent International union, the respondent obligated itself to promote and assist petitioner in organizing all furniture workers in Los Angeles and vicinity. In express violation of the agreement, respondent conspired and overtly attempted to undermine, weaken and destroy the local union which it was obligated to support. Respondent hired persons for the sole purpose of carrying on a continual campaign to deprive petitioner and its membership of all of its contract and property rights. Employers were actually solicited by respondents and its agents to breach their contracts with petitioner and to refuse to forward dues checked off pursuant to contracts with petitioner.

All of the evidence establishing the persistent and wilful violation of its agreement by respondents was uncontradicted below. Respondents chose to ignore the uncontroverted proof, and the courts below followed suit. Nor

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[6]Where the result reached allegedly denies federal rights, this Court may re-examine the facts to determine whether a petitioner by contested proof or undisputed evidence has sustained his claim of unconstitutional deprivation. *Merchants Nat'l Bank v. City of Richmond*, 256 U. S. 635, 638; *Carlson v. Curtiss*, 234 U. S. 103, 106; *Brooklyn Bank v. O'Neil*, 324 U. S. 697, 703; *Kern-Limerick, Inc. v. Scurlock*, 347 U. S. 110, 121; *Hoover & Allison Co. v. Evatt*, 324 U. S. 652, 659; *Pierre v. Lousiana*, 306 U. S. 354, 358; *Creswell v. Knights of Pythias*, 225 U. S. 246, 261-2. Failure of the state courts below to consider the undisputed evidence or to make findings with respect thereto was in itself a contravention of the due process clause of the Constitution. *B. & O. R. R. Co. v. United States*, 298 U. S. 349, 368; *Georgia Ry. Co. v. Decatur*, 295 U. S. 165, 171. If the evidence was considered, but disregarded as immaterial, the necessity for review is equally plain. *Merchants Nat'l Bank v. City of Richmond*, 256 U. S. 635, 638; *Brooklyn Bank v. O'Neil*, 324 U. S. 697, 703; *Hoover & Allision Co. v. Evatt*, 324 U. S. 652, 659; *Pierre v. Louisiana*, 306 U. S. 354, 358.

was there any contention below that petitioners in any way violated the terms of its agreement with respondents. [Rep. Tr. 1306.] Moreover, respondents could not deny the constant efforts vainly made by petitioners t ascertain what their rights were in the light of the plain attempt by respondents to repudiate their contract obligations and to destroy the petitioners. Petitioners disaffiliated from respondents only after respondents had plainly and clearly repudiated the contract which bound the parties. The record is uncontradicted on this issue. It is fundamental that a repudiation of a contract, amounting to a breach, warrants the other party in treating the contract at an end. (*The Eliza Lines,* 199 U. S. 119, 128.) The rule, of course, is the same in all jurisdictions including California (*Oliver v. Campbell,* 43 Cal. 2d 298, 273 P. 2d 15; *Central Oil Co. v. So. Ref. Co.,* 154 Cal. 165, 97 Pac. 177), but the court below declined to apply the applicable law so far as the claims of petitioners were concerned.

It is in the light of the aforesaid uncontradicted record and applicable law that the action of the courts below must be considered. Those courts held, despite the evidence, that the ultimate act of disaffiliation by the petitioners (even if it came after absolute repudiation of the contract by the respondents) entitled respondents to invoke the forfeiture clause of the contract and deprive petitioners of all of their property, rights and assets, and this without notice, hearing or charges as required by the very contract which respondents had breached.

The essential basis for the ruling of the courts below is the view that public policy requires the state courts to sanction repudiation of contracts and the arbitrary confiscation of property whenever an international union deems such action the only available expedient for remov-

ing the "Communistic leadership" of a local union. Because the record was barren of any proof of wrongdoing by the local union, and indeed of any so-called "Communist leadership," the courts below were led to override the undisputed evidence at the trial and to decide the issues on grounds *dehors* the record. The opinion below states that "the regional CIO director informed respondent Pizer that the CIO had rid itself of Communistic leadership in the California State CIO Council and in the Los Angeles CIO Council, and that it was now up to the International to provide some relief to its own members in Los Angeles" (p. 2); ". . . the individual worker was entitled to be protected from the Communistic influence of the officers of the local" (p. 5); "It has been held that the Communist Party seeks its members especially in the labor unions in which it can compel employers to accept and retain its members. *Black v. Cutter Laboratories,* 43 A. C. 813, 829" (pp. 5-6).

1. The case herein bears the impress of the recently enunciated doctrine by the California courts in *Black v. Cutter Laboratories,* 43 A. C. 813, 278 P. 2d 905, certiorari granted by this Court on October 10, 1955. That doctrine, broadly stated, questions the right of Communists to earn a livelihood and the right of labor organizations to make and enforce collective bargaining agreements which as construed, provide protection for the employment rights of workers in industry including workers alleged to be Communists. Consistent with this doctrine, the courts below have decided that an international union may avoid its contract and arbitrarily deprive an association of its property, assets and rights if the officials of the International deem the officers of the local union to be following the "Communistic line."

Here, it should be noted, the courts have affirmatively aided the wrong-doer by their judgments and decrees. The case is not one of inaction; it is affirmative state action which has stripped the association and its members of all their property and privileges. This has been done in support of an unfettered discretion. For here there was no proof that any person involved was a Communist nor was there any evidence that petitioner or its leadership were "Communist controlled." During the process of undermining and destroying petitioners, respondent and its agents did indeed indulge in name calling. Based upon this bootstraps evidence, the position of respondent, adopted by the courts below, was that the property of the local union may be confiscated whenever the officers of the International in their opinion decide that the officers of the local union are following the "Communist line."

The implications of the holding below are as significant in legal terms as those presented in *Black v. Cutter Laboratories, supra,* upon which the Court below relied and which is presently before this Court on review. Much of the legal argument in the petition for writ of certiorari in *Black* is equally applicable here, and the questions there involved which moved this Court to grant the writ are either explicitly or implicitly presented here. If the policy of a state is to sanction the arbitrary destruction of all trade unions and the confiscation of their property, whenever the officers of an International union decide that the officers of the trade union are Communists, or following the "Communist line," this Court should at least decide whether such state action can be upheld in the light of constitutional inhibitions, especially when doubt has been cast upon the validity of such state

action by the recent grant of certiorari in *Black v. Cutter Laboratories.*

That the fundamental issues in *Black v. Cutter Laboratories* now pending before this Court and the case herein are virtually identical is evident from an examination of the posture of each of the cases below and the manner in which they arose. Basically, in *Black,* the union pursuant to its contract had obtained an arbitrator's award directing the reemployment of one of the members of the union, a beneficiary under the contract. The state courts refused to enforce the award made pursuant to the contract, thus not only effectively cutting off the remedy but the very right to contract itself. The grounds for this action was the asserted state policy which allegedly requires the state courts to refuse enforcement of contracts when a party in interest is a Communist. Such a case involving questions of palpable deprivation of rights and property without due process of law and denial of the equal protection of the laws could not avoid this Court's careful scrutiny.

The case herein present the same issues, though in a stronger setting. Here the contract was between the local union and international union. The breach of the contract was by the International, and the evidence of the breach was not disputed. Under ordinary contract law, the local union was entitled to consider the contract at an end, and it did so. Thereupon, the wrong-doer proceeded into the state courts and solicited their aid in enforcement of the very contract which it had breached and brought to an end. In total disregard of the uncontradicted evidence, the state courts gave their affirmative assistance to the wrong-doer and ordered the local union stripped of its properties, rights and assets. Thus, the

local union was deprived of its defense against the enforcement of a contract breached by the suing party; was deprived of the right to treat a contract at an end when the other party to the contract has absolutely repudiated the agreement; and therefore as effectively deprived of the right to contract as the union in *Black*. The grounds for these rulings with explicit reliance on *Black* in the opinion of the court below, were that the judgment was justified because of the "Communistic influence" in the local union. Thus, this time affirmatively, the state courts deprived petitioners of their properties without due process of law and denied to them the equal protection of the laws.[7] The deprivation of a legal right and defense by a state court which results in the arbitrary confiscation of the defendant's property for the benefit of the plaintiff (*Hovey v. Elliot*, 167 U. S. 409) is as much a denial of due process of law and the equal protection of the laws as the denial by a state court of a remedy for the enforcement of a property right (*Truax v. Corrigan*, 257 U. S. 312).

It is submitted, respectfully, that the issues in *Black v. Cutter Laboratories* and the proceeding herein are the same, and review should be granted here as in *Black*. It

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[7]Question (1) in the petition for writ of certiorari in *Black v. Cutter Laboratories* reads as follows: "Whether the decision below, by denying to petitioner the right to enforce a contract for employment in, and to one of petitioner's members the right to engage in, one of the ordinary vocations of life, constitutes State action depriving petitioner and its members of liberty and property without due process of law, contrary to the Fourteenth Amendment to the United States Constitution." Compare question (1) herein. Virtually all the questions presented here were presented in the *Black* petition. The similarity is not merely fortuitous; it flows from the same state policy first enunciated by a majority of the California Supreme Court in *Black*, presently under review here.

may be also appropriate, it is respectfully submitted, in the event of the granting of the writ that the two cases should be heard together.

2. The case herein bristles with constitutional questions of serious import, ripe for adjudication. Petitioner, and its members, have been deprived of their property without substantive or procedural due process of law. State courts have given their sanction to a wrongful and highly injurious invasion of property rights. Substantively, the courts below have sanctioned a purely arbitrary or capricious exercise of asserted power whereby the owners of property have been deprived of their properties without recourse. Procedurally, the wrongdoer and the courts below, without notice, hearing, charges or proof, have concluded that petitioner is governed by "Communistic" officials and should therefore be denuded. In short, the state has deprived persons of their property without due process of law. The decisions of this Court manifestly condemn such action. (*Truax v. Corrigan,* 257 U. S. 312; *Meyer v. Nebraska,* 262 U. S. 390; *Truax v. Raich,* 239 U. S. 33.)

3. The courts below have enunciated a state policy which creates invidious and arbitrary distinctions between persons in the same class. It would appear, if the judgment below is permitted to stand, that only those local trade unions whose officers and members so conduct themselves as to satisfy the arbitrary edict of officials of another union that the local is free from "Communistic taint" are protected from wrongful invasions of their property or rights. Local unions deemed by the fiat of officials of an international union to be following the "Communist line" are without rights or remedies in the

state of California. The Fourteenth Amendment to the Constitution of the United States inhibits the state from denying to persons the equal protection of the laws. (*Shelley v. Kramer,* 334 U. S. 1; *Barrows v. Jackson,* 346 U. S. 249; *Yick Wo v. Hopkins,* 118 U. S. 356.)

4. The effect of the rulings of the state courts below is to vest legislative and executive governmental power in private organizations. The officers of organizations such as those of respondents here have been empowered to destroy local trade unions and deprive them of their properties, regardless of their constitution or contract, whenever such officers rule that the local union is following the "Communist line." The arrogation of similar powers even by officials of government has been denied. (*Wieman v. Updegraff,* 344 U. S. 183; *Joint Anti-Fascist Refugee Committee v. McGrath,* 341 U. S. 123.) This Court has held that there is no power in private combinations to assume the powers of a legislature or the duties of law enforcement. (*Eastern States Lumber Ass'n v. United States,* 234 U. S. 600, 614; *Fashion Guild v. Federal Trade Commission,* 312 U. S. 457, 465; *American Medical Ass'n v. United States,* 130 F. 2d 233, 248 (C. A., D. C., 1942), aff'd 317 U. S. 519; *United States v. Gypsum Co.,* 333 U. S. 364, 400.) Nor, where the fundamental rights to organize and to work for a living at decent standards are concerned, may private persons or combinations be empowered to arbitrarily deprive persons or groups of such rights. (*Steele v. Louisville & N. R. Co.,* 323 U. S. 192; *Tunstall v. Brotherhood of Locomotive F. & E.,* 323 U. S. 210; *Graham v. Brotherhood of Locomotive F. & E.,* 338 U. S. 232.) Moreover, the delegation of such arbitrary power to private persons by the state for the asserted purpose of freeing trade unions

from "Communist influence" raises serious questions of federal-state relationships. Whether the Internal Security Act of 1950, 50 U. S. C. A., Section 781, the Communist Control Act of 1954, 50 U. S. C. A., Section 841, and the Smith Act, 18 U. S. C. A., Section 2385, to raise only a few of the federal statutes, "preempts the field," is a question which has given this Court serious concern. (*Commonwealth v. Nelson,* 377 Pa. 58, 104 A. 2d 133 (1954), certiorari granted October 14, 1954. See also, *Hines v. Davidowitz,* 312 U. S. 52.)

5. The state courts below have sanctioned the deprivation of contract rights without notice, charges or a hearing, and without proof of wrongdoing except the unfounded and unambiguous accusation of "Communist influence." The effect of the holding is to deprive petitioner union (and all other unions similarly situated) of any right to enforce its contracts, and therefore of the right to contract itself, for in the case herein judgment has been rendered against petitioner despite the uncontradicted evidence of respondents' breach of contract and respondents' admission in open court that petitioner had never violated any of the obligations of the contract prior to such breach. Deprivation of the right to contract violates the fundamental law. (*Allgeyer v. Louisiana,* 165 U. S. 578; *Pierce v. Society of Sisters,* 268 U. S. 510.) The state policy enunciated by the courts below and now made into a rule of law attaints persons without a semblance of due process. (*Constitution,* Art. I, Sec. 9; *Cummings v. Missouri,* 4 Wall. (U. S.) 277.) It impairs the obligation of contracts (*Constitution,* Art. II, Sec. 10; *Columbia Railway v. South Carolina,* 261 U. S. 236; *Tidal Oil Co. v. Flannagan,* 263 U. S. 44) because by their reliance upon the rationale of *Black v. Cutter Labora-*

tories, the state courts have drawn upon the alleged policy of federal and state legislation in the internal security field to justify their actions here. (See, *Ashton v. Cameron County Dist.,* 298 U. S. 513; *Williams v. Bruffy,* 96 U. S. 176.) The effect of the state action below is to seriously undermine the right of persons to organize into trade unions of their own choosing and for trade unions to fairly represent their members in dealing with employers. (*American Steel Foundries v. Tri-City C. T. Council,* 257 U. S. 184, 208-9; *Senn v. Tile Layers Protective Union,* 301 U. S. 468.) The radial impact of the state policy embodied in the judgment below is to deprive persons of their right to earn a livelihood. This Court has been quick to hold any subtle encroachment upon this fundamental right. (*Yick Wo v. Hopkins,* 118 U. S. 356, 370; *Truax v. Raich,* 239 U. S. 33, 38; *Meyer v. Nebraska,* 262 U. S. 390, 399.)

6. Petitioner's rights to freedom of speech, press and assembly under the First Amendment as embodied in the Fourteenth Amendment are also impaired by the holdings of the courts below. If individuals or associations may be deprived of contract and property rights merely because of an accusation or label of "Communist," where in fact speech and action has been entirely lawful in character, then clearly self-censorship will be in order by those "who know the consequences" of any deviation from established dogma. (*Cf., Int. Ass'n of Mach. v. Labor Board,* 311 U. S. 72, 78.) The Constitution does not permit the abridgment of the fundamental freedoms by such unlawful means. (*DeJonge v. Oregon,* 299 U. S. 353; *Herndon v. Lowry,* 301 U. S. 242; *Stromberg v. California,* 283 U. S. 359.) Moreover, the view that a trade union and its

members may be deprived of all their property and contract rights because of some "Communist line" or "Communist influence" trenches deeply into the tradition that "beliefs are personal and not a matter of mere association." (*Schneiderman v. United States,* 320 U. S. 118, 136.) It offends decent standards of a civilized society to punish persons, not by proof of any wrongdoing, but merely for imputed association. (*Wieman v. Updegraff,* 344 U. S. 183.)

7. Finally, by the decision federal supremacy is undermined in the field of labor relations. Congress has adopted a comprehensive system for regulation of labor relations in all industries affecting commerce. (Labor-Management Relations Act of 1947, 29 U. S. C. 141, *et seq.*) The Act includes specific provisions with respect to eligibility of unions to the procedures of the Act which eligibility gives them the right to act as collective bargaining representatives. 576 CIO, the petitioner herein, which afterwards became an independent union, so qualified by the filing of its financial statements and non-Communist affidavits as required by law and in addition it was certified as collective bargaining representative in many shops. The effect of this decision is to hold that a union so qualified and so certified can be deprived of its right to contract or to enforce collective bargaining agreements because it may be labeled Communistic. Without the power to contract or to enforce its contracts labor unions cannot exist. Through this decision the state court has set up qualifications for functioning as a labor union which are in conflict with the qualifications established by the federal law. By this method employees are deprived of the right, guaranteed by federal law, to select their own collective bargaining agents, and the union's right established by

that law to act as such agent is thereby defeated. See *Hill v. Florida,* 325 U. S. 538; *Weber v. Anheuser Busch, Inc.,* 75 S. Ct. 480, 99 L. Ed. 386, Mar. 28, 1955, and cases summarized therein; Article VI of the United States Constitution.

Conclusion.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

BEN MARGOLIS,

Attorney for Petitioners.

APPENDIX A.

Constitutional Provisions Involved United States Constitution.

ARTICLE I.

Section 9.

No Bill of Attainder or *ex post facto* Law shall be passed.

Section 10.

No State shall . . . pass any Bill of Attainder, *ex post facto* Law, or Law impairing the Obligation of Contracts.

ARTICLE VI.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding.

AMENDMENT XIV.

. . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statutes Involved.

Federal Statutes.

LABOR-MANAGEMENT RELATIONS ACT OF 1947.

29 U. S. C., Section 157.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a) (3) of this title.

29 U. S. C., Section 159(a).

Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further,* That the bargaining representative has been given opportunity to be present at such adjustment.

29 U. S. C., Section 159(b).

The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this subchapter, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided,* That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

29 U. S. C., Section 159(f).

No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b), of section 160 of this title,

unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and by-laws and a report, in such form as the Secretary may prescribe, showing—

(1) the name of such labor organization and the address of its principal place of business;

(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

(3) the manner in which the officers and agents referred to in clause (2) of this section were elected, appointed, or otherwise selected;

(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

(6) a detailed statement of, or reference to provisions of its constitution and by-laws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial

transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor; and (B) can show that prior thereto it has—

(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) of this section to be filed with the Secretary of Labor.

29 U. S. C., Section 159(g).

It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B) of this section. No labor organization shall be eligible for certification under this section as the representative of any employees, and no complaint shall issue under section 160 of this title with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection.

29 U. S. C., Section 159(h).

No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 160 of this title, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 286, 287, 1001, 1022, and 1023 of Title 18 shall be applicable in respect to such affidavits.

APPENDIX B.

Opinion of the District Court of Appeal.

[2nd Civil No. 20224, May 31, 1955.]

Respondents sued appellants to enjoin the officers of appellant, independent Union 576, from disbursing and concealing the funds of Local 576, CIO, and to prevent appellants' use of the property of such local. The International Union is an unincorporated association and a labor union which exists for the purpose of representing workers in collective bargaining, for establishing wage standards and for improving the economic and social welfare of its members and of working people generally. Local 576 is also an unincorporated voluntary association existing by virtue of a charter issued to it by the International Union. Its purposes are the same as those of the International. Respondents brought the action individually and as officers of the International and as representatives of Local Union 576, United Furniture Workers of America, CIO.

In the latter part of 1949, the Congress of Industrial Organizations (herein called CIO) held a convention in Cleveland, Ohio, where an amendment to their constitution was adopted allowing the CIO Executive Board to expel any International Union "whose policies and activities are consistently directed toward the achievement of the program or the purposes of the Communist Party or other totalitarian movements." In accordance with this new amendment, charges were brought before the executive board of CIO against respondent herein, The United Furniture Workers of America (hereinafter called International) for the purpose of expelling respondent International on the ground that the Interna-

tional had consistently followed the Communist Party line. Immediately following these charges, the International president, Morris Pizer, publicly announced that he was supporting the CIO policy with the result that the charges by the CIO were deferred until after the forthcoming meeting of the International in June of 1950. After a great deal of debate and inner strife, the International adopted Pizer's resolution endorsing a pro-CIO, anti-communist policy and defeated the opposing resolution that was anti-CIO.

Local Union 576, United Furniture Workers of America, CIO (herein referred to as Local 576) was chartered by and affiliated with the International. When the national conference of June, 1950, was held, Local 576 sent as its representative to the conference, appellant Gus Brown. He supported and voted for the anti-CIO resolution. The convention delegates voted in favor of the pro-CIO, anti-communist resolution 25,524 to 6,307. Appellant Brown as representative of Local 576 therefore lost. It was assumed by the International that the local unions, as satellites of the International, would abide by the parent organization's decision and remove any Communistic leadership that existed in their respective groups. Such, however, was not the case here and Local 576 continued to follow the policy that had been banished by the International. When the attitude of the leaders of 576 became generally known, its membership began appreciably to decline numerically. Request were made to the International to issue a new charter. Finally, the regional CIO director informed respondent Pizer that the CIO had rid itself of Communistic leadership in the California State CIO Council and in the Los Angeles CIO Council, and that it was now up to the International to

provide some relief to its own members in Los Angeles. A petition was received by Pizer from certain members of 576 stating that the local was no longer able to give the proper protection to its members; that their bargaining power was sacrificed because the local was too easily attacked on the Communist issue by the employers; that "its officers have appointed shop stewards against the wishes of the members and have prevented the elected shop stewards from functioning." As the danger of losing its membership to the AF of L was imminent, Pizer as president of the Internationai, with the approval and consent of its General Executive Board, on August 1, 1950, issued a charter to Local 1010, United Furniture Workers of America, in order to preserve the membership of Local 576 to the CIO. This new Local 1010 was chartered for the purpose of absorbing the anti-Communist members of Local 576 and preserving their membership to the International. On August 16 the officers of 576 formally established the independent union, also known as 576, herein referred to as "Independent 576" CIO funds of Local 576 were immediately disbursed by the new union as back pay, advance legal fees, prepayments to the accountant, etc. On September 14, 1950, respondents filed the instant action and asked for an injunction to prevent the Independent 576 from disbursing and concealing the funds and from appropriating the name of CIO 576. A preliminary injunction was granted December 26, 1950, substantially complying with plaintiffs' request. Subsequently, the case came to trial resulting in a judgment for plaintiffs. This appeal is from that judgment.

Appellants contend that the trial court erred in finding that there was no breach of contract by the International;

that under the local's constitution, the International was obligated to support Local 576; instead of this support, the International attempted to destroy Local 576 by chartering Local 1010 in the same area; that 576 had finally to withdraw from the International to protect itself from destruction although Local 576 actually wished to stay with the International.

Such contention brings us face to face with the principal issue, to-wit, whether a group of members of a local union may secede from the parent body and take with it the name, funds, properties and other assets of the original local. It is stipulated by appellants that they violated the constitution in their disaffiliation from the International. They contend, however, that the contract had already been breached by the International's conduct, thus relieving appellants of the obligation to follow the constitution. By reason of such stipulation, a complete interpretation of the constitution is unnecessary. Article XXXIX of the local's constitution, Section 2, states that so long as seven members continue their affiliation with the International, all property and funds shall remain with the local. If less than seven members continue their affiliation with the local, all property and funds shall revert to the parent organization. Section 3 states that no funds shall be distributed or divided among the members of the local in contemplation of secession or disaffiliation with the International. Findings 6 and 7 declare that the provisions of Article XXXIX were violated.

In a case directly in point, even to the requirement that seven members must remain affiliated for the local to function, it was held that the new independent local was not entitled to the funds or the collective bargaining agreements upon seceding from its parent organization.

(Morrison v. Majestic Laundry System, 103 N. Y. S. 2d 791, 797; see also Federation of Insurance Employees v. United Office and Professional Workers, 74 A. 2d 446, 449.) The law is well settled in this state that the International had a better title to the property of the disbanded union than the newly formed independent even though some of the membership might remain the same. (Brown v. Hook, 79 Cal. App. 2d 781, 795.)

The trial court found herein that there was no breach of contract on the part of the International, that under the constitution, the individual worker was entitled to be protected from the Communistic influence of the officers of the local; that it was the individual workers of the local to whom the International owed a duty and not the local as such. The preamble of the constitution refers to the wage earners and Article III, Section 1, reads, "The jurisdiction of the United Furniture Workers of America shall consist of *all workers* employed in or about the plants." Appellants' authorities are distinguished on their facts. (Local 1140 v. United Electrical, Radio & Machine Workers, 45 N. W. 2d 408.) In the case at bar, the International was not expelled from the CIO and there was no question about the direct relationship of Local 576 to the CIO. Even if the situation were such as to present the question of affiliation with the CIO through the parent International, appellants' contentions are answered by Seslar v. Union Local 901 Inc., 87 Fed. Supp. 447, 450, which held that the only contact the local has with the CIO is through the International. Respondents' action was reasonable, legal and necessary in protecting its membership from the Communistic influence which, the local's membership felt, was discouraging the acquisition of new members and was, itself, misrepresenting Local 576. It has been held that the Communist

party seeks its members especially in the labor unions in which it can compel employers to accept and retain its members. (Black v. Cutter Laboratories, 43 A. C. 813, 829.) The trial court was entitled to find from the facts proved that this was the situation which the International was trying to prevent.

Appellants contend that the International breached its contract by issuing a new charter to 1010 in the territory of 576. It was proved to be common practice to have more than one local in the same area. Examples were Burlington, Vermont, and Jamestown, Buffalo and New York City. Nowhere do appellants specify the section of the constitution that contains such a provision as would restrict an area to one local. The constitution limited the jurisdiction of 576 to furniture workers but did not forbid the International to grant future charters. The trial court held that the International was justified, not in setting up a rival organization, but in attempting to protect the local's present membership by the means to which it resorted.

Appellants contend that the court erred in enjoining the use of the name "576" to the new independent and in preserving the name as property to the International. In Brown v. Hook, *supra*, page 796, the court held that the names of the two locals are the same; that the name is the property of the International and that the respondents were entitled to an injunction to protect their rights to its exclusive use, because of the "confusion and misleading that must necessarily follow." (*Ibid.* p. 800.)

Appellants state, "If there was any doubt in the trial judge's mind about the financial . . . support given to appellant local . . ." such records should have been produced. It is not for this court to surmise upon the

possibility of doubt in the mind of the trial judge. Nowhere does it appear in the record that any such doubt prevailed in the making of the findings. They are positive, clear and concise, indicating no vacillation or uncertainty.

Appellants contend that the trial court should have allowed the introduction into evidence of a purported statement of respondent Pizer made in 1948 to the effect that the International was obligated to the local to help it retain its membership. The refusal of the trial court to admit a purported statement made in 1948 under entirely different circumstances and policy could hardly be said to be prejudicial, especially in the light of the finding that one of the main reasons and purposes of the International's action was to preserve the local membership of 576 to the International union and prevent their defection to a rival organization.

Appellants contend that (1) the court erred in ruling as hearsay what was said at the organization of Independent 576 and (2) that it erred in admitting a letter into evidence purportedly signed by appellant Brown. It is not shown how either ruling caused prejudice or influenced the court's determination of the case. In the absence of such showing, this court will not indulge in a lengthy discussion of the trial court's ruling. Although appellants specify numerous alleged errors in the admission and rejection of evidence, "it is considered unnecessary to enumerate them for the reason that error under our law is no longer deemed prejudicial . . ." unless resulting in a miscarriage of justice. (Const. Sec. 4½, Art. VI.) The burden rests on the complaining party to show not only error but error which is sufficient to justify a reversal. This the appellants have failed to do. (Coleman v. Farwell, 206 Cal. 740, 741.)

Appellants contend that the trial judge committed prejudicial error with respect to the accounting by charging appellants (1) for uncollectible accounts receivable, (2) for refund of wage deductions, (3) for legal retainer, (4) for interest commencing October 6, 1950, and (5) for expenses after August 15, 1950. The basis for these contentions is mainly that the amounts due are unliquidated and therefore uncertain and thus cannot be awarded by the court. In similar circumstances, it was held that although the exact amounts of indebtedness were not known at the time the complaint was filed, this fact did not render a claim unliquidated. Appellant had the use of the money and it would be unjust and inequitable not to charge him with interest from the time the action was brought. The claims of respondent were capable of being made certain by calculations within the meaning of Section 3287, Civil Code. (Peterson v. Lyders, 139 Cal. App. 307, 309.) Furthermore, the only necessity for an accounting was the result of the appellants' failure properly to account for the funds it had converted. (Meyers v. The Texas Company, 6 Cal. 2d 610, 618.) As it can be ascertained from the record that there is no miscarriage of justice in the accounting rendered, we shall uphold the findings of the trial court. (Whann v. Doell, 192 Cal. 680, 684.)

Respondents action in all respects has been reasonable, legal and necessary and they did not appear before the trial court with unclean hands.

The judgment is affirmed.

MOORE, *P. J.*

We concur:

McCOMB, *J.*

FOX, *J.*

APPENDIX C.

Order Denying Hearing After Judgment by District Court of Appeal.

[2d District, Division 2, Civil No. 20224.]

Order Due July 30, 1955.

In the Supreme Court of the State of California.

In Bank.

Pizer, *et al.*, Plaintiffs & Respondents, vs. Brown, *et al.*, Appellants, Brown-Saltman Furniture Co., *et al.*, Defendants and Respondents.

Appellants' petition for hearing Denied.

GIBSON, *Chief Justice.*

Filed July 27, 1955.

WILLIAM I. SULLIVAN, *Clerk,*

By.....,

S. F. Deputy.